

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ALPHA FINANCIAL MORTGAGE, INC., <i>et al.</i> ,)	
)	
)	
Plaintiffs,)	Civil Action No. 09-385
)	
v.)	Magistrate Judge Bissoon
)	
DONALD A. BAUGH, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

The Defendants’ Motion for Dismissal (Doc. 12), or for the issuance of a show cause order (*see id.*), will be granted to the extent described below.¹

BACKGROUND

Plaintiffs, through their counsel L.F. Grimm, Jr., Esq., filed this lawsuit in the Court of Common Pleas of Fayette County, Pennsylvania. *See* Fayette Cty. Dkt. Sheet for G.D. No. 637 of 2009, attached as Ex. A to Notice of Removal (Doc. 1). Moving Defendants removed the action to this Court and, consistent with standard procedures, the Clerk’s Office entered the name and address of Plaintiffs’ counsel into the docket. Neither the Complaint nor the County Docket Sheet, attached to the Notice of Removal, contained Plaintiffs’ counsel’s address, so the Clerk’s Office used the one identified in Defendants’ Certificate of service:

¹ This Motion was filed by Defendants Norma J. Ryan and Tracey Sheehan Zivkovich (“Moving Defendants”). *See* Doc. 12 at 1. Regardless of whether the remaining Defendants file similar motions, or join the instant one, the Court’s rulings and analyses regarding Plaintiff’s capacity to proceed apply irrespective of the several Defendants’ identities. *See generally* discussions *infra*.

L.F. Grimm, Jr., Esquire
L.F. Grimm Jr., & Assoc.
710 Old Clarion Road, Suite 1
Pittsburgh, PA 15236

See Doc. 1 at 5.

On April 3, 2009, the undersigned entered an Order Setting Initial Scheduling Conference and transmitted it to Plaintiffs' counsel, via First Class U.S. Mail, at the address provided by Moving Defendants. *See* Court's Ltr. post-marked Apr. 3, 2009 (attached hereto under "Appendix A"). Thirteen days later, on April 16th, the correspondence was "RETURN[ED] TO SENDER[,] NOT DELIVERABLE AS ADDRESSED[,] UNABLE TO FORWARD." *See id.*

On April 17, 2009, the undersigned placed a "remark" on the record memorializing these events. *See* Remark. The Court also explained:

[Upon further investigation,] Plaintiff counsel's actual address, as identified through public record and confirmed by the Prothonotary's Office for the Court of Common Pleas of Fayette County, . . . is: L.F. Grimm, Jr., Esq., 710 Old Clairton Road, Suite 1, Pittsburgh, PA 15236. Today, Chambers corrected Plaintiff counsel's address in CM/ECF and re-sent the Order dated [April 3, 2009], via 1st Class U.S. Mail, to Plaintiff's counsel at the corrected address.

Id. (emphasis added).

On April 22, 2009, the Court's second letter, sent to the corrected address, was "RETURN[ED] TO SENDER[,] NOT DELIVERABLE AS ADDRESSED[,] UNABLE TO FORWARD." *See* Court's Ltr. post-marked Apr. 17, 2009 (attached hereto under "Appendix B"). Defense counsel filed the instant Motion one day later, highlighting similar difficulties they have experienced in trying to contact Plaintiffs' counsel. *See* Mot. at ¶¶ 6-7

(indicating that “all mail [has been] returned indicating ‘no forward order on file,’” and “Defendants have made numerous attempts to contact Plaintiffs’ counsel” at his telephone number, which “rings busy at all hours of the business day”).

Moving Defendants have made every reasonable effort to contact Plaintiffs’ counsel, to no avail. In addition to Defense counsel’s efforts, the undersigned has confirmed that the address and phone number identified are the same ones on record for Plaintiffs’ counsel before the Disciplinary Board of the Supreme Court of Pennsylvania. *See* website at: http://www.padisciplinaryboard.org/pa_attorney_info.php?id=24728&pdcount=0 (identifying L.F. Grimm, Jr., Esq., as “active [status]” lawyer in Pennsylvania, with same business address and phone number referenced in Defendants’ Motion). Finally, the undersigned’s Chambers took yet another step to contact the Fayette County Prothonotary’s Office, in reference to G.D. No. 637 of 2009 (*i.e.*, this case before removal), and the Office confirmed that the same contact information for Plaintiffs’ counsel appeared on its docket. *Cf. generally* Court’s “remark” dated Apr. 17, 2009.

Unsurprisingly, counsel’s provision and maintenance of accurate contact information is a prerequisite to proceeding with litigation in federal court. Carey v. King, 856 F.2d 1439, 1441 (9th Cir. 1988) (“[a] party, not the district court, bears the burden of keeping the court apprised of any changes in . . . mailing address”); *accord* Orix Fin. Servs., Inc. v. Thunder Ridge Energy, Inc., 579 F. Supp.2d 498, 510 (S.D.N.Y. 2008) (“[e]ach party has an obligation to leave a forwarding address or otherwise stay in contact with the [c]ourt to ensure that he receives and responds to any [c]ourt order”) (citation to quoted source omitted); *see also* Whitehead v. A.M. Int’l, Inc., 1996 WL 590541, *3 (7th Cir. Oct. 10, 1996) (“[i]t would be absurd to require the district court to hold a case in abeyance

indefinitely . . . because it is unable, through the plaintiff's own fault, to contact the plaintiff to determine if his reasons for not prosecuting his lawsuit are reasonable") (citation to quoted source omitted). For this reason, the Court agrees with Moving Defendants that a show cause order is warranted.

Given the uncertainties surrounding this case, moreover, the Court will grant Moving Defendants' request to vacate the deadlines currently established, namely Defendants' answer deadlines and the Case Management Conference scheduled for May 12, 2009.

CONCLUSION

For all of the reasons stated above, Defendants' Motion (**Doc. 12**) is **GRANTED** to the extent identified herein; Plaintiffs are **ORDERED TO SHOW CAUSE** why this case should not be dismissed under Federal Rule 41(b) for failure to prosecute; **this Show Cause Order is returnable May 8, 2009**; Defendants' answer deadlines are **VACATED** and will be reset, as appropriate; and the Case Management Conference scheduled for May 12, 2009 at 9:30 a.m. is **CANCELLED**.

IT IS SO ORDERED.

April 28, 2009

s/Cathy Bissoon_____
Cathy Bissoon
United States Magistrate Judge

cc (via 1st Class U.S. Mail):

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cc (via email):

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